

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL ACTING AS THE
IMPERIAL COUNTY CERTIFIED UNIFIED PROGRAM AGENCY

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|-----------------------------|---|-----------------------------|
| In the Matter of: |) | |
| |) | |
| Accu Chem Conversion, Inc. |) | |
| |) | |
| 605 N. Third Street |) | |
| |) | |
| El Centro, California 92243 |) | Docket No. SCUPA2010IM003 |
| |) | |
| I.D. No. CAL 000 248 596 |) | CONSENT ORDER |
| |) | |
| and |) | Health and Safety Code |
| |) | |
| Craig. G Robitaille, |) | Section 25187 and 25404.1.1 |
| |) | |
| an individual; |) | |
| |) | |
| and |) | |
| |) | |
| Mike Oliva, an individual |) | |
| |) | |
| (Respondents) |) | |

INTRODUCTION

The California Department of Toxic Substances Control acting as the Imperial County Certified Uniform Program Agency (Department) and Accu Chem Conversion, Inc. and Craig Robitaille, an individual; and Mike Oliva, an individual (hereinafter the Respondents) enter into this Consent Order and agree as follows:

1. Facility. Respondents operate a facility that handles hazardous materials and generates hazardous waste at the location of 605 N. 3rd Street, El Centro, California 92243.

2. Jurisdiction. Sections 25187 and 25404.1.1 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

3. The Department alleges the following violations:

3.1. Respondents violated California Health and Safety Code section 25507, subdivision (a) on or about November 20, 2006 by failing to immediately notify the California Office of Emergency Services (currently called CAL-EMA) of a release of hydrochloric acid to the air. Respondent's employee informed regulatory authorities of the release during a subsequent routine inspection.

3.2. Respondents violated California Code of Regulations, title 22, section 66262.34, subdivision (d)(2) on or about May 2007 in that Respondents failed to have the numbers of the emergency coordinators, the location of the fire extinguishers and spill control equipment, or the fire department telephone number posted at the facility offices.

3.3. Respondents violated California Code of Regulations, title 19, section 2740.1 on or about September 25, 2007 and on or about September 25, 2008 in that Respondent's failed to submit registration information under the CAL-ARP and failed to submit an RMP under Cal-ARP. This issue was litigated by Respondents.

3.4. Respondents violated California Health and Safety Code section 25189, subdivision (a) on three occasions; however only one occasion is included in this consent order. On or about December 28, 2006 Respondent's submitted false

information to a government agency by failing to indicate that Accu Chem Conversion, Inc. was a hazardous waste generator on the Business Plan Form 1403. The local government agency uses the form to determine regulatory programs and compliance requirements applicable to a facility.

3.5. Respondents violated California Health and Safety Code section 25507, subdivision (a) on or about March 2, 2009 by failing to immediately notify the California Office of Emergency Services (currently call CAL-EMA) of a release of hydrochloric acid to the air.

3.6. Respondents violated California Code of Regulations, title 22, section 66262.34, subdivision (f) on or about March 3, 2009 in that Respondents failed to properly label a roll off bin containing hazardous waste.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Respondents waive any right to a hearing in this matter.

6. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondents admit the violations as described in this Order.

SCHEDULE FOR COMPLIANCE

10. Respondents have corrected all violations cited in paragraphs 3.1 – 3.6.

SETTLEMENT

11. Penalties for the above listed violations were assessed at \$108,000.

12. Based upon ability to pay documentation submitted to the Department, the parties have agreed that the base penalty will be reduced to \$37,500.

13. Respondent Accu Chem Conversion, Inc. and Respondents Craig G. Robitaille and Mike Oliva have agreed to be jointly and severally responsible for the penalty amount of \$37,500.

14. Respondents chose to litigate some issues of compliance, and during the period of litigation the Respondents improperly ceased paying fees for required program elements resulting in a fee due balance of \$11,293. The past due balance has accrued penalties and interest. The penalties and interest are being adjusted by the Department based upon Respondent's willingness to enter this Consent Order.

15. Respondent Accu Chem Conversion, Inc. and Respondents Craig G. Robitaille and Mike Oliva have agreed to be jointly and severally responsible for the fee due balance amount of \$11, 293.

16. This settlement is entered into based upon an examination of three years of corporate income tax returns and other asset information; and representations based upon the financial status of the officers and directors of Accu Chem Conversion, Inc.; and based upon representations of an economic industry forecast.

17. During the term of the payment plans in this agreement, Accu Chem Conversion, Inc. will submit to the Department their annual federal and state corporate income tax returns. During the term of this agreement, the individuals Craig G. Robitaille and Mike Oliva will submit to the Department their annual federal and state income tax returns. The information shall be marked "Confidential." Should it become apparent that the Respondents regain the ability to pay the entire \$108,000 assessed penalty; this

amount will be due and payable to the Department. Respondents agree that for the purpose of determining ability to pay; Accu Chem, Inc. will have the ability to pay if taxable income shown on the US Corporation Federal Income Return exceeds \$108,000 (currently line 30 on the 2009 return). Respondents agree that for the purpose of determining ability to pay; the individuals Craig Robitaille and Mike Oliva will have the ability to pay if total income shown on their Federal Income Tax Return exceeds \$216,000 (currently line 22 on the 2010 return); excluding taxable social security benefits and excluding any separate income received by gift, inheritance or bequests by the spouses of the signatories of this agreement; as long as those spouses are not officers or directors of Accu Chem Conversion, Inc. during the payment plan time period of this Consent Order. Respondents agree that a failure of any Respondent to submit tax return information as described in this agreement will make the entire \$108,000 penalty due and payable immediately to the Department. Respondents will submit tax return information simultaneously to the Department when the tax returns are filed with the state and federal taxing authorities. The information will be sent to the Department at the address Respondents customarily use for written communication with the CUPA. When the conditions of this Consent Order are fulfilled; the confidential tax information of Respondents will be destroyed by shredding.

PAYMENTS

18.1. Respondents agree to pay to the Department for the penalty violations a total of \$37,500 plus interest on the following payment schedule:

a. Twelve (12) payments of \$752.07 commencing July 1, 2011 and due the first of each month thereafter.

b. Eleven (11) payments of \$1,002.77 commencing July 1, 2012 and due the first of each month thereafter.

c. One (1) payment of \$17,589 due June 1, 2013.

18.2. Respondents agree to pay to the Department for the past due fees in the amount of \$11, 293 plus interest on the following payment schedule:

a. Ninety five (95) weekly payments of \$125.00 commencing the week ending May 27, 2011.

b. One (1) final payment of \$104.

Payment shall be mailed to:

Department of Toxic Substances Control
Accounting Office
MS 23A
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

18.3. In the event that Respondent fails to make timely payments as required in this order Respondents agree the entire assessed penalty amount of \$108,000 will be due and payable , and to pay all costs incurred by the Department in pursuing collection, including attorneys' fees.

OTHER PROVISIONS

19. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

20. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

21. Parties Bound: This Consent Order shall apply to and be binding upon Respondents and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals and partners, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

22. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

23. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

24. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

25. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

This agreement may be executed in counterparts.

Dated: June 17, 2011

Original signed by Craig B. Robitaille
Signature of Respondent Accu Chem Conversion, Inc.

Original printed by Craig B. Robitaille
Printed Name and title of Accu Chem, Conversion, Inc.
signatory

Dated: June 17, 2011

Original signed by Craig B. Robitaille
Signature of Respondent Craig Robitaille

Dated: June 16, 2011

Original signed by Mike Oliva
Signature of Respondent Mike Oliva

Dated: June 20, 2011

Original signed by Roger Vintze
Signature of the Department's Representative

Original printed by Roger Vintze
Printed Name and Title of the Department's Signatory